

October 8, 1998

BY HAND DELIVERY

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

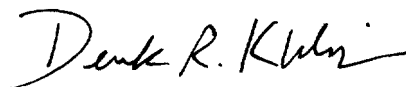
**Re: Inquiry Concerning the Deployment of Advanced
Telecommunications Capability to All Americans in a Reasonable and
Timely Fashion, and Possible Steps to Accelerate Such Deployment
Pursuant to Section 706 of the Telecommunications Act of 1996, CC
Docket No. 98-146**

Dear Ms. Salas:

Pursuant to Section 1.419 of the Commission's Rules, 47 C.F.R. § 1.419, an original and four (4) copies of a letter from the Telecommunications Industry Association are enclosed for filing in the above captioned proceeding.

If you have any questions concerning this filing please contact the undersigned.

Respectfully Submitted,



Derek R. Khlopin

Enclosure

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Re: Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, CC Docket No. 98-146

To the Commission:

The Telecommunications Industry Association (TIA), with over 900 member companies that supply communications and information technology equipment, is the principal representative of the communications manufacturing sector of the economy, which generated over \$100 billion in spending in 1997.¹ The Commission's decision in this proceeding as to whether it needs to take action to encourage the deployment of advanced telecommunications capability will have a significant impact on TIA's members. They are engaged in the development and manufacture of the infrastructure and products necessary for the provision of advanced telecommunications capability. TIA members manufacture all forms of communications, data networking, and wireless equipment that can be used to provide such capability.

TIA was, and still is, a strong supporter of the pro-competitive, deregulatory goals of the Telecommunications Act of 1996, and of Section 706 in particular. Section 706 represents explicit Congressional intent that the deployment of advanced telecommunications capability to all Americans be encouraged without preference for the technology that will deliver this capability. Currently, various technologies promise to offer some or all Americans varying forms of advanced telecommunications capability. For example, TIA strongly believes that the cable industry has the broadband infrastructure to quickly bring advanced telecommunications capability to Americans. TIA also believes that wireless technology, both terrestrial and satellite, will bring advanced telecommunications capability to Americans. Incumbent local exchange carriers (ILECs) and new competitive providers are in a position right now to increase

¹ Source: *The 1998 MultiMedia Telecommunications Market Review and Forecast*, Multimedia Telecommunications Association.



their level of investment necessary to bring advanced technologies to all, or a substantial portion, of Americans.

All competitors should be on equal footing to compete in the emerging market for advanced telecommunications capability. TIA believes that the market is too nascent for a prediction that any particular category of providers will dominate this market. Therefore, the Commission must remove any regulatory disincentives that exist with regard to deploying advanced telecommunications capability. The Commission needs to move to release regulatory burdens on those carriers that are being burdened by them, rather than bring new competitors under varying regulatory schemes that may be outdated.

TIA realizes that a Notice of Inquiry (NOI) typically is only a first step in the Commission's policy-making process. TIA therefore suggests that the Commission pursue the implementation of Section 706 in two steps. In the first step, and in response to the record developed under this *NOI*, it should produce its statutorily mandated report on whether or not advanced telecommunications capability is being deployed "to all Americans in a reasonable and timely fashion" as required under Section 706(b). If a negative determination is made therein, the Commission should pursue the second step in which it will decide what action to take.

If the Commission reaches the conclusion that investment in advanced telecommunications capability is not occurring in a reasonable and timely fashion, the Commission must take the next step, which is to "take immediate action" to accelerate the deployment of advanced telecommunications capability as required under Section 706(b). At that point, the Commission should look to Section 706(a)'s specific direction that the Commission use regulatory forbearance and other means to encourage such deployment.

While the Commission's goal of regulatory parity is laudable, that parity should be reached by equally deregulating all providers, not equally regulating them. The Commission must adhere to market-based principles in order to afford competing facilities-based providers an opportunity to bring bandwidth into all homes. As the thrust of Section 706 is to encourage facilities-based competition, competing providers must have incentives to build their own networks where feasible. The Commission should guard against placing a greater value on the opening of all broadband infrastructures to competitors than on the competition that may develop between different broadband mediums (telephone network, cable and wireless). The unfortunate result of focusing on the former could be that none of the mediums bring advanced telecommunications capability to all Americans in a reasonable and timely fashion.

The Commission should consider thoroughly all potential models for the governing of the converging marketplace. The record in this proceeding reflects many opinions on how the Commission can encourage the deployment of advanced

telecommunications capability. Many of these, of course, are conflicting as carriers come to the Section 706 discussion under various regulatory regimes, be it Title II, Title III, Title VI, or as unregulated service providers. As a result, the Commission may not be able to find a "one size fits all" approach to encouraging deployment and may need to establish multiple deregulatory solutions, one for each class of provider.

When proposals from carrier classes are in conflict, the Commission should keep in mind that the goal of Section 706 is to encourage investment in infrastructure. Section 706(a) states that "the Commission . . . shall encourage the deployment . . . of advanced telecommunications capability." No other objective is stated in the statute. As a result, the primary consideration in the Commission's development of a specific solution under Section 706 is the impact that it will have on investment in advanced telecommunications capability. The Commission must optimize investment in making its decision under Section 706.

TIA believes that once the Commission makes a determination regarding the level of advanced telecommunications deployment, more narrowly-crafted solutions may emerge. Increasingly, the Commission speaks of using the Internet as a model of how advanced telecommunications capability and service offerings can develop. Unfortunately, these services will not develop at the rate that the Internet has unless and until the Commission reduces the role that regulation plays in the development of the market. Prophylactic regulation is unlikely to foster Internet-like growth of such technologies. The Commission often speaks of its oversight of the communications industry evolving from hands-on regulation to enforcement in instances where there is evidence of anticompetitive behavior. The result would be that the antitrust laws become increasingly important. The Commission can and should use this Section 706 proceeding as a way of moving substantially toward that goal by seeking ways to reduce the heavy-handed regulation that appears to be handicapping the industry.

TIA's evaluation of current marketplace conditions, as well as the record developed thus far in this proceeding, suggest that the Commission is likely to arrive at the following conclusions: (1) demand exists for advanced telecommunications capability; (2) equipment is available at reasonable cost to deploy such technology; (3) deployment is not occurring in a reasonable and timely fashion; (4) regulation appears to be having a negative impact on deployment; (5) the Commission needs to take some form of action to encourage deployment. The first step is for the Commission to reach these conclusions in the report that the Commission is obligated to issue in this proceeding. As a result of these realities, the Commission can then move to the next step of taking "immediate action" to encourage the level of investment necessary to enable advanced telecommunications capability to be made available to all Americans in a reasonable and timely fashion.

TIA looks forward to the Commission's report in this proceeding. We are confident that the Commission will arrive at a solution that will instill confidence in all market participants that the deployment of advanced telecommunications capability represents a sound and attainable business objective.

Sincerely,

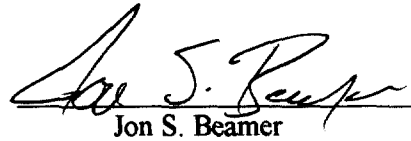


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CC: Honorable William E. Kennard, Chairman
Honorable Susan Ness, Commissioner
Honorable Harold W. Furchtgott-Roth, Commissioner
Honorable Michael K. Powell, Commissioner
Honorable Gloria Tristani, Commissioner
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Robert M. Pepper, Chief, Office of Plans and Policy
Dale N. Hatfield, Chief, Office of Engineering and Technology
John W. Berresford, Senior Antitrust Attorney, Common Carrier Bureau
ITS, Inc.

CERTIFICATE OF SERVICE

I, John S. Beamer, hereby certify that on this 8th day of October, 1998, copies of the foregoing letter from the Telecommunications Industry Association were delivered by hand to the following:



Jon S. Beamer

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